IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 376 OF 1989

The State of Maharashtra ...Appellant.

V/s

Suryakant Vasant Parab,
age 32 years, Occ. Agri.
r/o. Sarambal, Tal. Kudal,
Takkarwadi, Dist. Sindhudurg ...Respondent.

Mr. A.M. Shringarpure, APP for the appellant - State.

Mr. A.P. Mundargi for Mr. S.S. Parab for the respondent.

CORAM: V.M.KANADE,J.

DATE: 13th September, 2004

ORAL JUDGMENT:

1. Heard the learned APP for the appellant - State

and the learned Counsel for the respondent.

2. Appellant - State is challenging the order of acquittal of the respondent - original accused passed by the Additional Sessions Judge, Sawantwadi in Criminal Appeal No.13 of 1987. Respondent along with one more accused was charged by the Judicial Magistrate, First Class, under section 324 read with section 506 read with section 324 of the I.P.C. The Judicial Magistrate, First Class, acquitted the accused No.2, however, convicted accused No.1 to undergo R.I. for six months and to pay fine of Rs 500/- and, in default, to undergo R.I. for six

months. Being aggrieved by the said Order, the respondent - accused No.1 preferred an appeal before the Additional Sessions Judge, Sawantwadi being Criminal Appeal No.13 of 1987. The said Criminal Appeal was allowed in favour of the respondent - accused No.1 and the conviction and sentence passed by the Lower Court was set aside. Appellant - State has filed an appeal against the order of acquittal passed by the Additional Sessions Judge, Sawantwadi.

3. The learned APP appearing on behalf of the appellant - State has taken me through the judgment of the Additional Sessions Judge, Sawantwadi. The incident took place on 4/12/1984 at about 11.30 A.M. when the complainant had gone to his coconut yard. At that time, the accused entered the premises and both the accused assaulted the complainant with a sickle (Koyata) causing injuries on his head. The Trial Court acquitted the accused No.2, however, convicted accused No.1 - respondent herein. The Additional Sessions Judge has observed that the complainant had described the manner of attack on his person at the hands of accused No.1 but did not explain how the injury could be caused over the eyebrow if the attack was from back side. The Lower Appellate Court further observed that instrument i.e. sickle (Koyata) was

neither searched by the police in the investigation nor was produced before the Court. The Additional Sessions Judge further observed that the Investigation Officer also had admitted that neither he had seized any article nor did he remember as to how the complainant was assaulted. The Additional Sessions Judge has also observed that though the complainant, in his evidence, has stated that he was hospitalised for 22 days, in fact, from the record and the evidence of Medical Officer, it transpired that the complainant was in the hospital for less than an hour. Under these circumstances, the Lower Appellate Court came to the conclusion that the statement of the complainant could not be relied upon. The Lower Appellate Court further observed that the evidence of P.W. 3 - Vasanti also could not be relied upon as she was not an eye witness and she had not seen the incident as she ran away on seeing the accused No.1. The Lower Appellate Court also noticed that there was an unusual delay in filing the FIR. It observed that delay of 7 hours in lodging the FIR created a doubt regarding veracity of the entire incident.

4. In my view, finding given by the Lower Appellate Court is perfectly in order. There is no reason to interfere with the view taken by the Additional

Sessions Judge. Appeal against the acquittal is, therefore, dismissed.

V.M. KANADE, J.